THE BROACH AND KAIRA INCUMBERED ESTATES ACT, 1881.

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ACT No. XXI of 1881.[1]

[THE BROACH AND KAIRA INCUMBERED ESTATES ACT, 1881.]

[*7th September 1881.*]

Amended by Bom. 2 of 1919.
Repealed in part, by Act 38 of 1920.
Declared not to be in force in the Panch Mahals by Act 7 of 1885.
Adapted and modified by the Adaptation of Indian Laws Order in Council.
Repealed in part by Act 1 of 1938.
Adapted and modified by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

An Act to amend the law providing for the relief of Thakurs in the Districts of Broach and Kaira.

WHEREAS it is expedient to amend the law providing for the relief of Thakurs in the Districts of Broach and Kaira; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called Broach and Kaira Incumbered Estates Act, 1881: and it shall come into force on the passing thereof. Short title. Commencement.

2. [*Partial repeal of Act XIV of 1877.*] *Rep. Act I of 1938.*

3. In this Act— Interpretation-clause.

"thakur" means also Talukdar, Jagirdar, and Kasbati, and such other classes of holders of estates as the [2][Provincial Government] may [3]* * * * * declare to be thakurs for the purposes of this Act:

"heir" means the person for the time being entitled as heir to a thakur:

"Commissioner" means the Revenue Commissioner of the Northern Division of the Presidency of Bombay.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any thakur, or any person who would be sole heir or one of the heirs to such thakur if he then died intestate, may apply, in writing, to the Commissioner stating that such thakur is subject to debts or liabilities, other than debts due, or liabilities incurred, to [4][the Crown], or that his immovable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case. Application for benefit of Act.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1881, Pt. V. p. 953, and for Proceedings in Council, *see ibid*, Supplement, pp. 435, 451, 1060 and 1092.
This Act is not in force in the Panch Mahals—*see* the Panch Mahals Laws Act, 1885 (7 of 1885) s. 2 (*1*).

[2] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation of Indian Laws Order in Council.

[3] The words "with the previous sanction of the Governor General in Council" were omitted by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

[4] The words "the Crown" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

When any thakur or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

Order to inquire.

5. When any such application is made by or on behalf of a thakur, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amounts of such debts and liabilities and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the [1][Provincial Government] in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

Verified statement to be submitted.

6. When an inquiry has been directed under section 5, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether movable or immovable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

False averments in statement.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code. XLV of 1860.

Report of inquiry and proceedings thereon.

7. The officer so appointed, after making inquiry, shall submit a report of his proceedings to the Commissioner.

On receipt of such report, the Commissioner may—

(*a*) direct a further inquiry, or

(*b*) dismiss the application, or

(*c*) by order published in the [2][Official Gazette], direct that the immovable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner hereinafter provided, by a manager.

The Taluqdari Settlement-officer[3] for the time being shall, unless the [4][Provincial Government] in any case otherwise directs, be such manager.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

"Order of management"; to what it extends.

8. Such order (hereinafter called "the order of management") shall extend to all immovable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance

[1] The words "Provincial Government" were substituted for the words "Governor of Bombay in Council" by the Adaptation of Indian Laws Order in Council.

[2] The words "Official Gazette" were substituted for the words "Bombay Government Gazette", *ibid.*

[3] As to this Officer, *see* the Broach and Kaira Incumbered Estates Act, 1877 (14 of 1877), s. 40.

[4] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation o Indian Laws Order in Council.

of the management, and to all debts and liabilities to which he is subject or which are charged on the whole or any part of his immovable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

Commencement of management.

The management shall be deemed to commence from the date on which the order is published.

Effect of order of management.

9. On the publication of the order of management the following consequences shall ensue :—

Stay of pending proceedings, etc.

first, all proceedings then pending in any Civil Court in [1][a Province of India] in respect to the debts and liabilities mentioned in section 8 shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended;

Bar of fresh proceedings.

secondly, so long as the management continues, no fresh proceedings processes, executions or attachments shall be instituted in or issued by any Civil Court in [1][a Province of India] in respect of such debts and liabilities;

The debtor incompetent—to contract debts, to incumber or alienate property, to grant receipts for rent.

thirdly, so long as the management continues, he debtor shall be incompetent—

(*a*) to enter into any contract involving him in pecuniary liability, or

(*b*) to mortgage, charge, lease or alienate the property under management or any part thereof, or

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom :

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

Manager to have powers of owner and to receive rents and profits; to have powers of Collector for their recovery.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management;

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a thakur, all the powers possessed by a Collector, under the law for the time being in force, for securing and recovering land-revenue due to Government:

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years to take effect in possession.

Manager to pay therefrom cost of management and repairs.

11. From the sums received or recovered under section 10, the manager shall pay—

first, the costs of the management, including the costs of necessary repairs;

[1] These words were substituted for the original words by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

Government revenue, etc.

secondly, the Government revenue and all debts and liabilities for the time being due or incurred [1][to the Crown] in respect of the property under management;

rent due to superior holder:

thirdly, the rent (if any) due to any superior holder in respect of the said property;

allowance for maintenance and expenses of debtor and family,

fourthly, such periodical allowance as the Commissioner may from time to time fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs;

cost of improvements, etc.

fifthly, the cost of such improvements of the said property as he thinks necessary, and as are approved by the Commissioner.

Residue how disposed of.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section 8, other than those so due or incurred [1][to the Crown], and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

Notice to claimants against debtor.

12. On the publication of the order of management, the manager shall publish in the [2][Official Gazette] a notice in English and Gujrati calling upon all persons having claims against the debtor or the property under management to notify the same in writing to such manager within six months from the date of the publication.

Copies of notice to be exhibited.

He shall also cause copies of such notice to be exhibited at the Mamlatdars' kacharis in the district in which the said property lies, and at such other places as he thinks fit.

Claim to contain full particulars.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Documents to be given up.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

Entries in books.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Power to exclude document not produced with claim.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

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[1] The words "to the Crown" were substituted for the words "to Government" by the Adaptation of Indian Laws Order in Council.

[2] The words "Official Gazette" were substituted for the words "*Bombay Government Gazette*" *ibid.*

Claim not duly notified to be barred.

14. Every such claim (other than claims of the [1][Crown] not notified to the manager within the time and in the manner required by such notice shall, except as provided in section 19, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged :

Admission of claims within further period of six months.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section 12, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Determination of debts and liabilities.

15. The manager shall inquire into the history and merits of every claim received under sections 12 and 14, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Power to rank debts and to fix interest.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon, to the date of the payment and discharge thereof.

Scheme for liquidation.

17. When the total amount of the debts and liabilities (including those due and incurred [2][to the Crown], has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Provisions of scheme.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section 11, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income, or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Proceedings of Commissioner on submission of scheme.

18. The Commissioner may—

(*a*) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme, or any revised liquidation-scheme submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

Power to relinquish management.

19. At any time before he has sanctioned a liquidation-scheme under section 18, the Commissioner may, by an order published in the [3][Official Gazette], direct that on a date fixed by such order the management shall be relinquished.

On the date so fixed—

(*a*) the management shall terminate ;

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[1] The word "Crown" was substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

[2] The words "to the Crown" were substituted for the words "to Government", *ibid.*

[3] The words "Official Gazette" were substituted for the words "*Bombay Government Gazette*", *ibid.*

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section 10;

(*c*) any residue of the rents and profits of the said property retained under the last clause of section 11 shall be paid to him; and

(*d*) the proceedings, processes, executions and attachments stayed and suspended under section 9, and the debts and liabilities barred by section 14, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION SCHEME.

Effects of sanctioning scheme.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the [1][Provincial Government] may from time to time by rule direct; and thereupon—

1st, all proceedings, processes, executions and attachments stayed or suspended under section 9 shall be for ever barred; and

2nd, every debt or liability due or owing to any person which was provable before the manager shall be extinguished, and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

Power to remove mortgagee in possession.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue-year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

Power to inquire into consideration given for leases.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager may inquire into the sufficiency of the consideration for which the lease was given; and, if such consideration appear to him insufficient, may by order, with the consent of the Commissioner, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and, in default of such payment, the lease shall be cancelled.

[1] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation of Indian Laws Order in Council.

Power to lease.

23. Subject to the rules made under section 31, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to raise money by mortgage or sale.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

(*a*) by mortgaging the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by charging the whole or any part of such property; or

(*c*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*d*) by borrowing money from Government at such rate of interest as appears reasonable to the [1][Provincial Government.]

Manager's receipt a discharge.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Termination of management.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*d*) of section 24, together with interest (if any) due thereon, have been paid and discharged as therein provided, or in such other manner as the Commissioner thinks fit, the manager shall publish in the [2][Official Gazette] a notice fixing a date for the termination of the management.

Restoration of owner.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section 24, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections 10, 23 and 24.

Death of debtor during management.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided,—

1st, the management shall continue and proceed in all respects as if such debtor were still living;

2ndly, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section 9; and

3rdly no Civil Court in [3][a Province of India] shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management, for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

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[1] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation of Indian Laws Order in Council.

[2] The words "Official Gazette" were substituted for the words "*Bombay Government Gazette*", *ibid.*

[3] These words were substituted for the original words by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

Mortgages, etc., made by restored thakur valid only for his life.

28. When a thakur has been restored under section 26 to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such thakur, shall be valid as to any time beyond his natural life [1][unless made or granted with the previous sanction of the Commissioner].

CHAPTER VI.

OF APPEAL AND REVISION.

Appeal.

29. An appeal against any decision or order under sections 14, 15, 16 and 22, or imposing a fine or imprisonment in exercise of the powers conferred by section 35, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

Power to call for proceedings and pass order thereon.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

MISCELLANEOUS.

Power to make rules.

31. The [2][Provincial Government] may, from time to time, make rules consistent with this Act—

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers inquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(*d*) for investing any moneys received of raised by the manager under this Act in any [3][securities of the Central Government or of a Provincial Government] and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

Such rules shall be published in the [4][Official Gazette], and when so published shall have the force of law.

Power to appoint new manager.

32. The [2][Provincial Government] may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act;

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[1] These words were added by s. 2 and First Schedule of the Bombay Repealing and Amending Act, 1919 (Bom. 2 of 1919).

[2] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation of Indian Laws Order in Council.

[3] These words were substituted for the original words by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

[4] The words "Official Gazette" were substituted for the words "Bombay Government Gazette" by the Adaptation of Indian Laws Order in Council.

and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

Managers and their agents to be public servants.

33. Every manager appointed under this Act and every agent of such manager shall be deemed a public servant within the meaning of the Indian Penal Code. XLV of 1860.

Investigation a judicial proceeding.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code. XLV of 1860.

Power to summon witnesses and compel production of documents.

35. For the purposes of this Act, the manager and any officer making an inquiry under section 5 may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure.

Bar of suits.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bona fide* pursuant to this Act.

Saving of jurisdiction of Courts in Broach and Kaira in respect of certain suits.

37. Nothing in this Act precludes the Courts in Broach and Kaira having jurisdiction in suits relating to the succession to any immovable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

Exemption of certain thakurs from certain provisions of Act.

38. Nothing in section 9 shall be deemed to render any of the following thakurs, namely, the thakur of Ahmod, the thakur of Sarod, the thakur of Kerwara, the thakur of Dehej, and the thakur of Jaṇiadra, incompetent to enter into contracts involving him in pecuniary liability, nor shall anything in section 28 apply to any of the said thakurs:

Provided that, if any such thakur has, since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said [1]Act No. XV of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from immovable property after deducting therefrom the land tax and other dues [2][of the Crown], the [3][Provincial Government] may, by notification in the [4][Official Gazette], declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly.

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[1] Act 15 of 1871 was repealed by the Broach and Kaira Incumbered Estates Act, 1877 (14 of 1877).

[2] The words "of the Crown" were substituted for the words "of Government" by the Adaptation of Indian Laws Order in Council.

[3] The words "Provincial Government" were substituted for the words "Local Government", *ibid.*

[4] The words "Official Gazette" were substituted for the words "Bombay Government Gazette", *ibid.*